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8 IN THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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10 DANIEL DAVID DYDZAK,
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12 Plaintiff-Appellant,
13
14 v.
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16 TANI CANTIL-SAKAUYE, ET AL.,
17
18 DEFENDANTS-APPELLEES.
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No. 23-15784, 23-16193

(Consolidated)

U.S. DISTRICT COURT CASE NO.

2:22-cv-01008-APG-VCF (Nev.)

APPELLANT'S INFORMAL OPENING BRIEF

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TABLE OF AUTHORITIES

CASE LAW

<u>Collins v. Union Federal Sav. & Loan Ass'n</u> , 99 Nev. 284, 303, 662 P.2d 610, 622 (1983)	7
<u>Gibson v. Berryhill</u> , 411 U.S. 564 (1973)	9
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<u>International Shoe Co. v. Washington</u> , 326 U.S. 310 (1945)	7
<u>Marbury v. Madison</u> , 5 U.S. 137 (1803)	9
<u>United States v. Mateo-Mendez</u> , 215 F.3d 1039, 1042	3
<u>United States v. Nixon</u> , 418 U.S. 683 (1954)	8

STATUTES/REGULATIONS

5th and 14 Amendments, U.S. Const. 9

TO THIS HONORABLE FEDERAL COURT OF APPEALS, ALL PARTIES AND THEIR
COUNSEL OF RECORD:

COMES NOW Plaintiff and Appellant, DANIEL DAVID DYDZAK ("DYDZAK"), and respectfully submits the following Opening Brief.

Dated: February 26, 2024

Respectfully Submitted,

DANIEL DAVID DYDZAK

Plaintiff and Appellant

1 **I QUESTIONS AND ISSUES PRESENTED ON APPEAL**

2

3 1. Did the lower court err in law and fact in entering Judgments against DYDZAK?

4

5 2. Did the lower court err in law and fact in granting Defendants' Motions to

6 Dismiss?

7

8 3. Did the lower court err in law and fact in ruling that it did not have personal

9 and subject matter jurisdiction to hear the case?

10

11 4. Did the lower court err in law and fact in not granting leave to amend the

12 Complaint?

13

14 5. Did the lower court err in law and fact in ruling that DYDZAK was subject to a

15 pre-filing Order?

16

17 6. Did the lower court err in law and fact in not allowing and dismissing DYDZAK's

18 bona fide and sufficiently pled causes of action and remedies, as set forth in his

19 Complaint?

20

21 7. Should this appeal be granted, with costs, and with a remand Order to the

22 lower court for further proceedings?

23

24 Applying either an abuse of discretion standard or de novo standard, the U.S.

25 District Court committed reversible error in dismissing this case. The appeal should be

26 granted, with remand instructions for further proceedings in the lower court.

27

28 **II STANDARD OF REVIEW**

29

30 The de novo standard prevails when a question of law predominates. United States

31 *v. Mateo-Mendez*, 215 F.3d 1039, 1042 (9th Cir. 2000).

III RELEVANT PROCEDURAL HISTORY

2 DYDZAK timely filed his lawsuit in the District Court of Clark County, Nevada (Case
3 No. A-22-847734-C) for violation of civil rights and other causes of action against several
4 Defendants. Defendants were duly served, other than Defendant THOMAS LAYTON
5 whom DYDZAK elected not to serve. Defendants TANI CANTIL-SAKAUYE and JORGE
6 NAVARRETE subsequently filed Motions to Dismiss the Complaint. DYDZAK opposed
7 same. Violating DYDZAK's civil rights and due process rights, the state judge deliberately
8 did not provide notice of a continued hearing date so that DYDZAK could do oral
9 argument. The Nevada state judge granted the aforesaid Dismissal Motion on June 3,
10 2022, and ordered Defendants CANTIL-SAKAUYE and NAVARRETE dismissed, without
11 foundation, from the case. This ruling contained numerous misstatements of the law,
12 and reference to alleged evidence and purported facts that are not appropriate at the
13 pleading stage. This state judge has since that ruling "retired" from the Nevada bench.

14 During the same time frame, on or about June 24, 2022, Defendants Dwyer,
15 Shaw, Schiffer, Thomas and King filed a removal petition to federal court on various
16 federal statutory grounds. (PACER 1, 2:22:cv-1008, hereinafter “LAWSUIT”).

17 The federal case was assigned to District Judge Andrew P. Gordon (PACER 2).

19 On July 1, 2022, Defendants ERIC GEORGE, RONALD GEORGE and ALAN I.
20 ROTHENBERG filed a Motion to Dismiss Complaint (PACER 5) and Request for Judicial
Notice (PACER 8).

Defendant WILLIAM DATO filed a Motion to Dismiss on July 12, 2022 (PACER 14).

23 Various bank entities filed a Motion to Dismiss on July 20, 2022 (PACER 22)

24 DYDZAK responded to the Motion to Dismiss by Defendants GEORGES and
25 ROTHENBERG on July 20, 2022 (PACER 246).

1 Defendant SCHWAB filed a Motion to Dismiss on July 25, 2022 (PACER 25), only
2 after evasively being in default of timely responding to the lawsuit.

3 Defendants ROTHENBERG and GEORGES filed Reply Briefs re: their Motion to
4 Dismiss on July 27, 2022 (PACER 28).

5 A Joint Status Report was filed on July 27, 2022 (PACER 29).

6 On August 1, 2022, DYDZAK filed Responses to various Motions to Dismiss (PACER
7 31, 32).

8 On August 3, 2022, DYDZAK filed a Request for Judicial Notice (PACER 34).

9 Reply Briefs were filed by various Defendants to DYDZAK's opposition pleadings
10 (PACER 36, 37, 43).

11 On August 5, 2022, DYDZAK filed a Response and opposition papers to the Motion
12 to Dismiss by Defendant SCHWAB (PACER 45).

13 Various so-called federal Defendants filed a Motion to Dismiss (PACER 46) on
14 August 30, 2022 (PACER 46).

15 DYDZAK sent an administrative letter to Chief Judge Du complaining about his
16 phone being illegally blocked (PACER 51).

17 DYDZAK moved to stay the case and discovery and for appointment of a special
18 master (PACER 52, 53).

19 Various Defendants responded to the stay and special master motion (PACER 54,
20 55, 56, 57, 58, 59, 60, 66, 67, 68, 69).

21 DYDZAK replied to those responses (PACER 70, 71, 72, 73, 74, 75, 76, 77).

22 Defendant TASHIMA joined in the Motion to Dismiss on October 7, 2022 (PACER
23 81).

24 The U.S. District Court granted Motions to Dismiss on October 7, 2022 (PACER 80).

1 Defendant LAYTON was dismissed from the case due to lack of service (PACER 83).

2 The lower court dismissed various Defendants from the case on April 17, 2023
3 (PACER 91).

4 Judgment in favor of Defendant RAWLINSON was entered on April 18, 2023
5 (PACER 92).

6 Judgment was entered as to other Defendants on August 4, 2023 (PACER 97).

7 Timely appeals were made from the two Judgments.

8

9

10

11

12 **IV ARGUMENT**

13

14 **(1) LAWSUIT SHOULD HAVE NEVER BEEN DISMISSED AT THE PLEADING STAGE**

15

16 DYDZAK is entitled to his day in court. Cases should not be dismissed when
17 adequately pled, which is the situation here. The case is not barred for the reasons
18 alleged by the lower court.

19 There is subject matter and personal jurisdiction because one of the named
20 Defendants, Defendant RAWLINSON , resides in Las Vegas, Nevada where the case was
21 filed. Underlying torts came about as a result of actions she took related to and bearing
22 on torts and other unlawful conduct that took place in Northern and Southern California,
23 and other locations under the 9th Circuit umbrella by the various named Defendants.
24 Minimum contacts with Nevada came about not only because of the residency of
25 Defendant RAWLINSON and the conduct of Defendant RAWLINSON but also because
26 actions, torts and inactions determined by her, or related to the subject matter of other
27 litigation ruled upon by her, originated from Northern California, Southern California
28 and other jurisdictions.

1 DYDZAK was entitled to elect his forum. See International Shoe Co. v. Washington, 326
2 U.S. 310 (1945).

3 The First Cause of Action in the Complaint for Violation of Civil Rights as to
4 Defendants CANTIL-SAKAUYE and NAVARRETE need not be considered by this Appellate
5 Court, because it was determined by a state judge and will be ultimately appealed to the
6 Supreme Court of Nevada. The Second Cause of Action for Violation of the Wiretap Act
7 need not be considered by this Appellate Court because Defendant LAYTON was
8 dismissed from LAWSUIT due to lack of service,

9 The Third Cause of Action for Conspiracy to Unlawfully Interfere with the
10 Processes of the Court as to Defendants SCHWAB, MILES, RONALD GEORGE, ERIC
11 GEORGE, ROTHENBERG, BANK ENTITIES, AKA DEFENDANT MIDLAND BANK, AND DATO is
12 sufficiently pled. A conspiracy to commit a tort is alleged between these Defendants.
13 These Defendants were implicated in prior rulings appealed before Defendant
14 RAWLINSON. Under Nevada law, an actionable civil conspiracy is a combination of two or
15 more persons who by some concerted action intend to accomplish some unlawful
16 objective for the purpose of harming another which results in damage. Collins v. Union
17 Federal Sav. & Loan Ass'n, 99 Nev. 284, 303, 662 P.2d 610, 622 (1983).

18 The Fourth Cause of Action adequately alleges a Violation of Civil Rights against
19 Defendants DWYER and THOMAS. Their unlawful actions pertain to the Ninth Circuit,
20 one of whose jurisdictions is Nevada so there is minimum contacts for jurisdiction,
21 Blocking DYDZAK's phone without cause and without a hearing is a violation of his rights
22 and actionable.

23 The Fifth Cause of Action for Violation of Civil Rights involves direct acts by
24 Defendant RAWLINSON and the other named Defendants to harm DYDZAK and is
25 actionable and adequately pled. There are minimum contacts because of Defendant
26 RAWLINSON's clear involvement and emanating from the "NORTHERN DISTRICT CASE"
27 (See Para. 48 of Complaint).

1 The Sixth Cause of Action involves violation of DYDZAK's civil rights by a non-
2 judge, Defendant SHAW, and other named Defendants illegally disbarring DYDZAK from
3 the 9th Circuit against due process and without a fair and impartial hearing. There is no
4 ruling on pending motions which is illegal and against Plaintiff's civil rights, tantamount
5 ~~to~~ ^{to} obstruction of justice. The 6th count is actionable and could be filed in Nevada as
6 under the Ninth Circuit jurisdictional umbrella. Upon information and belief, Defendants
7 SCHIFFER and SHAW were compromised due to financial conflicts of interest with
8 Defendant SCHWAB,

9 The Seventh Cause of Action for Violation of Civil Rights involves unfair and illegal
10 actions by the named Defendants in disbarring him from the federal Central District of
11 California without a hearing and for other reasons. In re Ruffalo, 390 U.S. 544 (1968)
12 requires procedural and substantive due process in federal attorney cases. The seventh
13 count is adequately pled.

14 The Eighth Cause of Action for Violation of Civil Rights against Defendants DATO
15 and CANTIL-SAKAUYE is adequately pled. These Defendants illegally put DYDZAK on the
16 California Vexatious Litigant List and can be sued.

17 It was improper of the lower Court to dismiss the Complaint, or at a minimum not
18 grant DYDZAK leave to amend.

19 This case does not involve suing for DYDZAK's California Disbarment Order to be
20 reversed and set aside, as improperly claimed by the lower court. DYDZAK properly
21 elected his forum to sue. There is no basis to claim that a Prefiling Order should be
22 allowed in this federal case.

23 The case should be remanded to the lower court. Individual parties such as Alan
24 Rothenberg and Charles Schwab should not be allowed to be dismissed. There should be
25 a trial on the merits.

27 No-one is above the Rule of Law, even the President of the United States. See U.S.
28 v. Nixon, 418 U.S. 683 (1974).

The Due Process Clause, guaranteed by the 5th and 14th Amendments, requires that there be fairness in court proceedings. This is a cornerstone of the American judicial system. The federal District Court could not simply disregard the U.S. Constitution and U.S Supreme Court precedent by ignoring DYDZAK's valid constitutional and civil rights. This constitutes reversible error.

As Chief Justice Marshall stated in Marbury v. Madison, 5 U.S. 137 (1803):
“The Government of the United States has been emphatically termed a government of laws and not of men. It will certainly cease to deserve this high appellation if the laws furnish no remedy for the violation of vested legal rights.”

Judges are required to act fairly and ethically. See unanimous decision of United States Supreme Court, Gibson v. Berryhill, 411 U.S. 564 (1973) [trier of fact incompetent to act by reason of bias].

v

CONCLUSION

This appeal should be granted, with costs.

Dated: February 26, 2024

Respectfully Submitted,

DANIEL DAVID DYDZAK

Plaintiff-Appellant

CERTIFICATE/PROOF OF SERVICE

I, JIM LANE, hereby declare that I am over the age of eighteen years and am not a party to the within above-entitled action, that I am employed in the County of Los Angeles, State of California, and that my business address is 4265 Marina City Drive, Ste 407W, Marina del Rey, CA 90292.

On February 26, 2024, I served a true and correct copy of the following document or pleading on the interested parties or their counsel of record:

APPELLANT'S INFORMAL OPENING BRIEF

[BY U.S. MAIL] On this same day, I mailed the interested parties or their counsel of record the above-described document or pleading by regular United States mail to their respective service or mailing addresses.

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6
7 I declare under penalty of perjury under the laws of the United States of America that the
8 foregoing is true and correct, and that this Declaration was executed on February 26, 2024,
9 at Los Angeles, California.

10
11 Jim Lane

12 JIM LANE

13 Declarant

CERTIFICATE OF COMPLIANCE

I, DANIEL DAVID DYDZAK, certify that this Opening Brief contains approximately 1738 words, excluding those items excluded by FRAP 32(f) and complies with the word limit of Cir.Rule 32-1 in appropriate word format.

Dated : 2-26-2024

Dickson, R. S.

DANIEL DAVID DYDZAK

Appellant